

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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YOANDY FERNANDEZ-MORALES,

Plaintiff,

v.

HALLING, *et al.*,

Defendants.

Case No. 3:23-CV-00490-MMD-CLB

**REPORT AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE¹**

[ECF No. 24]

This case involves a civil rights action filed by Plaintiff Yoandy Fernandez-Morales (“Fernandez-Morales”) against Defendants Joseph Benson, Nethanjah Breitenbach, Kyle Day, Brandt Halling, Jessica Rambur, and Megan Sullivan (collectively referred to as “Defendants”). Currently pending before the Court is Defendants’ motion to dismiss. (ECF Nos. 24, 30.) Fernandez-Morales responded, (ECF No. 31), and Defendants replied. (ECF No. 32.) For the reasons stated below, the Court recommends that Defendants’ motion to dismiss, (ECF No. 24), be denied.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Fernandez-Morales is an inmate of the Nevada Department of Corrections (“NDOC”). Fernandez-Morales initiated this action on October 5, 2023, for actions that occurred while he was incarcerated at the Northern Nevada Correctional Center (“NNCC”), by filing a complaint pursuant to 42 U.S.C. § 1983. (ECF No. 1.)

Fernandez-Morales’s complaint alleges that he injured his right ankle after C/O Halling confiscated his medically prescribed cane. He further alleges that despite complaining of severe pain, he did not receive an x-ray or pain medication until approximately one month after his injury and he did not receive an MRI until approximately four months after his injury. (ECF No. 8.) The District Court screened Fernandez-

¹ This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 Morales's complaint and allowed him to proceed on an Eighth Amendment deliberate
2 indifference to serious medical needs claim against Defendants and dismissed with
3 prejudice a Fourteenth Amendment administrative grievance process claim. (ECF No. 7.)

4 Defendants filed the instant motion to dismiss arguing Fernandez-Morales's
5 complaint should be dismissed because Defendants are entitled to qualified immunity.
6 (ECF No. 24.)

7 **II. LEGAL STANDARD**

8 Under Federal Rule of Civil Procedure 12(b)(6), a party may file a motion to dismiss
9 on the grounds that a complaint "fail[s] to state a claim upon which relief can be granted."
10 A complaint challenged "by a Rule 12(b)(6) motion to dismiss does not need detailed
11 factual allegations" but requires plaintiff to provide actual grounds for relief. *Bell Atlantic*
12 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Generally, a motion to dismiss pursuant to
13 Rule 12(b)(6) tests the "legal sufficiency of the claim." *Conservation Force v. Salazar*, 646
14 F.3d 1240, 1241-42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir.
15 2001)). In assessing the sufficiency of a complaint, all well-pleaded factual allegations
16 must be accepted as true, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and "view[ed] . . .
17 in the light most favorable to the" nonmoving party. *Lemmon v. Snap, Inc.*, 995 F.3d 1085,
18 1087 (9th Cir. 2021).

19 The Ninth Circuit has found that two principles apply when deciding whether a
20 complaint states a claim that can survive a 12(b)(6) motion. First, to be entitled to the
21 presumption of truth, the allegations in the complaint "may not simply recite the elements
22 of a cause of action, but must contain sufficient allegations of underlying facts to give fair
23 notice and to enable the opposing party to defend itself effectively." *Starr v. Baca*, 652
24 F.3d 1202, 1216 (9th Cir. 2011). Second, so that it is not unfair to require the defendant
25 to be subjected to the expenses associated with discovery and continued litigation, the
26 factual allegations of the complaint, which are taken as true, "must *plausibly* suggest an
27 entitlement to relief." *Id.* (emphasis added).

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1 Dismissal is proper only where there is no cognizable legal theory or an “absence
2 of sufficient facts alleged to support a cognizable legal theory.” *Davidson v. Kimberly-*
3 *Clark Corp.*, 889 F.3d 956, 965 (9th Cir. 2018) (quoting *Navarro*, 250 F.3d at 732).
4 Additionally, the court takes particular care when reviewing the pleadings of a *pro se*
5 party, because a less stringent standard applies to litigants not represented by counsel.
6 *Garmon v. Cnty. of Los Angeles*, 828 F.3d 837, 846 (9th Cir. 2016).

7 **III. DISCUSSION**

8 In his complaint, Fernandez-Morales sues Defendants Correctional Officer (“C/O”) *Halling*,
9 Medical Supervisor *Rambur*, Warden *Breitenbach*, C/O *Days*, Director of Nursing
10 *Sullivan*, and Doctor *Benson*. (ECF No. 8.) Fernandez-Morales alleges that on May 30,
11 2023, around 4:30 P.M., as Fernandez-Morales was leaving Chow House A with other
12 inmates, C/O *Halling* stood at the exit with other C/Os and stopped Fernandez-Morales.
13 (*Id.* at 4.) Because Fernandez-Morales does not speak English, another inmate named
14 *Dominguez* interpreted for Fernandez-Morales. (*Id.*) C/O *Halling* demanded that
15 Fernandez-Morales give C/O *Halling* his medically prescribed cane. (*Id.*) Fernandez-
16 Morales observed the other C/Os laughing, and as a result, asked if C/O *Halling* was
17 joking. (*Id.*) In response, C/O *Halling* stated that he was not joking, and instructed
18 Fernandez-Morales to hand C/O *Halling* his cane. (*Id.*) Fernandez-Morales explained that
19 his cane was medically prescribed, that he could not walk upright without it, and that he
20 may fall without his cane. (*Id.*)

21 C/O *Halling* did not believe Fernandez-Morales and stated that he had seen
22 Fernandez-Morales walking in the unit. (*Id.* at 4-5.) Fernandez-Morales informed C/O
23 *Halling* that he typically uses his cane for long distances. (*Id.* at 5.) Fernandez-Morales
24 had a medical order authorizing the use of his cane at his unit and offered to get the
25 medical order to show to C/O *Halling*. (*Id.*) C/O *Halling* replied that Fernandez-Morales
26 should “move along or face the consequences.” (*Id.*) Fernandez-Morales complied, gave
27 his cane to C/O *Halling*, and during the long walk back to his unit, Fernandez-Morales’s
28 right foot stopped working. (*Id.*) Fernandez-Morales collapsed in front of the main

1 entrance of Unit 2. (*Id.*) Fernandez-Morales twisted his right ankle. (*Id.*)

2 Other inmates assisted Fernandez-Morales by escorting him back to his unit. (*Id.*)
3 C/O David observed Fernandez-Morales's fall, informed staff that there was a "man down"
4 medical emergency and requested a medical response. (*Id.*) After 45 minutes, Nurse Sue
5 arrived, examined Fernandez-Morales's foot, and observed swelling, sensitivity, extreme
6 inflammation, and darkish or purple discoloration. (*Id.*) Nurse Sue ordered an x-ray for the
7 next morning and prescribed Tylenol for the pain and ice for the swelling. (*Id.*)

8 The next day, on May 31, 2023, however, Fernandez-Morales was not taken to
9 receive an x-ray and was not given pain medication or ice for his injury. (*Id.* at 10.)
10 Fernandez-Morales filed an emergency grievance. (*Id.*) C/O Day responded that because
11 Fernandez-Morales did not have a medical order for a walking device, it was not an
12 emergency and Fernandez-Morales would be scheduled for an appointment. (*Id.*)
13 Fernandez-Morales asserts that he was in severe, excruciating pain with a swollen right
14 ankle. *Id.* He asserts that his injury made it difficult to complete normal daily activities. (*Id.*
15 at 7.)

16 On June 1, 2023, Fernandez-Morales submitted a second emergency grievance.
17 (*Id.* at 10.) C/O Day responded that Fernandez-Morales received a wheelchair on that
18 day but did not indicate whether Fernandez-Morales would receive pain medication or
19 other treatment. (*Id.* at 11.) On June 6, 2023, Fernandez-Morales submitted a third
20 emergency grievance describing his pain and symptoms, but his grievance was ignored.
21 (*Id.*) On June 8, 2023, Fernandez-Morales submitted a fourth emergency grievance that
22 was also ignored. (*Id.*) Fernandez-Morales submitted an informal grievance regarding the
23 lack of medical attention and that his emergency grievances were ignored. (*Id.*)

24 On June 22, 2023, Fernandez-Morales was seen by Doctor Benson who ordered
25 an x-ray, MRI, pain medication, and an appointment with an orthopedic specialist. (*Id.*)
26 Fernandez-Morales received his pain medication eight days later. (*Id.*) On June 29, 2023,
27 Fernandez-Morales was notified that he was being scheduled for an MRI of his ankle as
28 well as an orthopedic evaluation. (*Id.*) On October 4, 2023, Fernandez-Morales received

1 an MRI. (*Id.* at 13.) His ankle was still swollen, inflamed, sensitive, and painful. (*Id.*)

2 On June 1, 2023, Fernandez-Morales submitted a grievance regarding C/O
3 Halling's actions. (*Id.* at 5-6.) Medical Supervisor Rambur rejected Fernandez-Morales's
4 grievances twice and instructed Fernandez-Morales not to re-submit his grievance. (*Id.*
5 at 6.) Fernandez-Morales attempted to report the incident to Director Dzurenda, but
6 Breitenbach intercepted his inmate request form. (*Id.*) Breitenbach informed Fernandez-
7 Morales that he has already submitted a grievance and to wait for a formal response. (*Id.*)

8 In July 2023, Breitenbach requested that Fernandez-Morales provide his medical
9 order because "no order was found." (*Id.*) In response, Fernandez-Morales asserted that
10 parts of his medical record have disappeared. (*Id.*) Breitenbach clarified that he meant to
11 inform Fernandez-Morales to always keep a copy of his medical order on his person. (*Id.*)
12 Breitenbach never contacted Fernandez-Morales again despite informing him that the
13 matter was being investigated. (*Id.*)

14 Defendants have now moved to dismiss the complaint, arguing (1) Defendants are
15 entitled to qualified immunity, (2) Fernandez-Morales has failed to identify a viable
16 deliberate indifference to serious medical needs claim, and (3) Fernandez-Morales has
17 failed to establish the existence of a serious medical need. (ECF No. 24.)

18 **A. Eighth Amendment – Deliberate Indifference to Serious Medical Needs**

19 Defendants argue Fernandez-Morales fails to identify a viable deliberate
20 indifference to serious medical needs claim. (ECF No. 24 at 9-10.) Defendants argue that
21 Fernandez-Morales "fails to present any evidence to support his claim that he had a
22 medical need for the use of a walking cane," and thus fails to establish the existence of
23 an objectively serious medical condition. (*Id.* at 9.) Further, Defendants argue to the
24 extent Fernandez-Morales "claims he needed a medical order for a cane, based on the
25 lack of a valid order from NDOC medical personnel in the documents he submitted, that
26 is a difference of medical opinion.... [and] does not establish the existence of deliberate
27 indifference." (*Id.*) Finally, Defendants argue that even assuming there was a delay in
28 Fernandez-Morales's medical treatment, he has no additional injury as a result and his

1 claim fails. (*Id.* at 10.) In sum, Defendants argue Fernandez-Morales’s complaint fails to
 2 state a deliberate indifference to serious medical needs claim. The Court disagrees.

3 Federal courts must conduct a preliminary screening in any case in which an
 4 incarcerated person seeks redress from a governmental entity or officer or employee of
 5 a governmental entity. See 28 U.S.C. § 1915A(a). In addition to the screening
 6 requirements under § 1915A, pursuant to the Prison Litigation Reform Act (“PLRA”), a
 7 federal court must dismiss an incarcerated person’s claim if the action “fails to state a
 8 claim on which relief may be granted....” 28 U.S.C. § 1915(e)(2). Dismissal of a complaint
 9 for failure to state a claim upon which relief can be granted is provided for in Federal Rule
 10 of Civil Procedure 12(b)(6), and the Court applies the same standard under § 1915 when
 11 reviewing the adequacy of a complaint or an amended complaint.

12 Here, the District Court screened Fernandez-Morales’s complaint pursuant to 28
 13 U.S.C. § 1915A(a) and 28 U.S.C. § 1915(e)(2). (See ECF No. 7.) The Court specifically
 14 found:

15 The Court finds that Plaintiff states a colorable claim for deliberate
 16 indifference to serious medical needs. Based on the allegations, Plaintiff
 17 injured his right ankle after C/O Halling confiscated his medically prescribed
 18 cane. Despite complaining of severe pain, Plaintiff did not receive an x-ray
 19 or pain medication until approximately one month after his injury and he did
 20 not receive an MRI until approximately four months after his injury. This
 21 claim will proceed against Defendants C/O Halling, Rambur, Breitenbach,
 22 C/O Days, Sullivan, and Benson.

23 (*Id.* at 7.) Because the District Court has already determined that Fernandez-Morales
 24 states a colorable Eighth Amendment claim against Defendants, and Defendants provide
 25 no additional basis for dismissal at this early stage of litigation, the Court recommends
 26 that Defendants’ motion to dismiss, (ECF No. 24), for failure to state a claim be denied.

27 **B. Qualified Immunity**

28 Next, Defendants argue that “[i]n the unlikely event this Court concludes that
 [Fernandez-Morales’s] Complaint states a plausible claim of a violation under the Eighth
 Amendment, based on [Fernandez-Morales’s] allegations, qualified immunity is still
 appropriate because there is no case that would put Defendants on ‘clear notice’ that

1 their actions in this particular case violated [Fernandez-Morales's] constitutional rights."
2 (ECF No. 24 at 10-11.)

3 The Eleventh Amendment bars damages claims and other actions for retroactive
4 relief against state officials sued in their official capacities. *Brown v. Oregon Dept. of*
5 *Corrections*, 751 F.3d 983, 988–89 (9th Cir. 2014) (citing *Pennhurst State Sch. & Hosp.*
6 *v. Halderman*, 465 U.S. 89, 100 (1984)). State officials who are sued individually may
7 also be protected from civil liability for money damages by the qualified immunity
8 doctrine. More than a simple defense to liability, the doctrine is “an entitlement not to
9 stand trial or face other burdens of litigation . . .” such as discovery. *Mitchell v. Forsyth*,
10 472 U.S. 511, 526 (1985).

11 When conducting a qualified immunity analysis, the Court asks “(1) whether the
12 official violated a constitutional right and (2) whether the constitutional right was clearly
13 established.” *C.B. v. City of Sonora*, 769 F.3d 1005, 1022 (9th Cir. 2014) (citing *Pearson*
14 *v. Callahan*, 555 U.S. 223, 232, 236 (2009)). A right is clearly established if it would be
15 clear to a reasonable official in the defendant’s position that his conduct in the given
16 situation was constitutionally infirm. *Anderson v. Creighton*, 483 U.S. 635, 639–40,
17 (1987); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 915 (9th Cir. 2012). In the context of a
18 motion to dismiss, factual allegations are taken as true and are construed in the light
19 most favorable to the nonmoving party. *Lee v. City of Los Angeles*, 250 F.3d 668, 679
20 (9th Cir. 2001) (citation omitted).

21 First, Fernandez-Morales alleges the violation of a clearly established right—that
22 Defendants denied and delayed him adequate medical care after confiscating a
23 medically prescribed cane causing him to injury his ankle and suffer severe pain. See
24 *Estelle v. Gamble*, 429 U.S. 97 (1976) (holding that the Eighth Amendment creates a
25 constitutional obligation on the part of the government to provide prisoners adequate
26 medical care); *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (a “plaintiff must show
27 a serious medical need by demonstrating that failure to treat a prisoner’s condition could
28 result in further significant injury or the unnecessary and wanton infliction of pain.”).

1 Second, a reasonable official would know that a denial of adequate medical treatment
2 violates a plaintiff's Eighth Amendment rights, as the law was clearly established at the
3 time period in question in this case. See *Estelle*, 429 U.S. at 103-05; see also *Jackson*
4 v. *McIntosh*, 90 F.3d 332 (9th Cir. 1996). Accordingly, the Court recommends
5 Defendants' motion to dismiss based on qualified immunity be denied.

6 **IV. CONCLUSION**

7 For good cause appearing and for the reasons stated above, the Court
8 recommends that Defendants' motion to dismiss, (ECF No. 24), be denied.

9 The parties are advised:

10 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
11 Practice, the parties may file specific written objections to this Report and
12 Recommendation within fourteen days of receipt. These objections should be entitled
13 "Objections to Magistrate Judge's Report and Recommendation" and should be
14 accompanied by points and authorities for consideration by the District Court.

15 2. This Report and Recommendation is not an appealable order and any
16 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
17 District Court's judgment.

18 **V. RECOMMENDATION**

19 **IT IS THEREFORE RECOMMENDED** that Defendants' motion to dismiss, (ECF
20 No. 24), be **DENIED**.

21 **DATED:** November 21, 2024.

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24 **UNITED STATES MAGISTRATE JUDGE**
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